

REMARKS

Claims 7, 8, and 10 to 17 are now pending.

In view of the following, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Applicants thank the Examiner for reconsidering and for withdrawing the restriction requirement. Applicants thank the Examiner for accepting replacement Figures 2(B) and 3(B).

Claims 7, 8, and 10 to 17 were objected to for certain informalities. While the objections may not be agreed with, to facilitate matters, the claims have been rewritten. Withdrawal of the objections is therefore requested.

Claims 7, 8, 10, 11, and 17 were rejected under 35 U.S.C. § 112, second paragraph, as indefinite. While the rejections may not be agreed with, to facilitate matters, claim 7 has been rewritten to better clarify the claimed subject matter. Approval and entry are requested.

Claims 7, 8, and 10 to 17 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 4,048,613 ("Ito"), in view of DE-4310354 ("DE '354"), and in further view of U.S. Patent No. 6,322,163 ("Siegel").

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that "rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d

1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

The Ito, DE '354, and Siegel references, whether taken alone or combined, do not disclose or suggest the feature of claim 12 in which "the situation analyzer unit *corrects the provisional point in time* of initiating an emergency braking on the basis of the vehicle deceleration as given by the determined coefficient of friction."

More specifically, as to DE '354, its text at page 1, line 19, to page 2, line 3, states that information is "used for changing the *setpoint value* of the adaptive cruise control", and it further states that "[i]f during warning braking, it turns out that the roadway has a relatively low coefficient of friction, a longer *setpoint distance* is selected to increase driving safety." As clearly indicated, the *setpoint distance* is altered. This discloses nothing about "correct[ing] the provisional point in *time* of initiating an emergency braking," as provided for in the context of the presently claimed subject matter. For at least this reason, claim 12 is allowable, as are its dependent claims.

Claim 7, as presented, includes features like those of claim 12, as presented, and it is therefore allowable for the same reasons, as are its dependent claims.

Claims 7, 8, and 10 to 17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,238,021 ("Sugimoto") in view of the Siegel reference.

The applied references do not disclose or suggest the feature of "increasing a braking force during the preliminary warning braking until at least one wheel locks reaching a maximum slip limit," as provided for in the context of the presently claimed subject matter. As to Siegel (at col. 1, lines 59 to 62), the cited slip limit is specifically selected to ensure the rear wheels do *not* lock. ("[D]uring a normal braking operation, it is possible to stop brake pressure increases in the rear wheel brakes . . . when a slip limit associated with the rear wheels is reached and to thus assure that . . . the front wheels tend to lock before the rear wheels.")

As best understood, the "slip limit" of Siegel occurs at a time that the rear wheels are not locked. Even if the rear wheels do lock at some point, nothing in Siegel discloses that it occurs as a result of "increasing a braking force during the preliminary warning braking until at least one wheel locks reaching a maximum slip limit." Further, Siegel only generally concerns avoiding wheel-lock, since it states that "[e]xcessive locking danger would then trigger the antilock operation." Thus, it would not be obvious to combine Siegel (which concerns avoiding wheel-

lock) and the Sugimoto reference. For at least these reasons, claim 7 is allowable, as are its dependent claims.

Claim 12, as presented, includes features like those of claim 7, as presented, and it is therefore allowable for the same reasons, as are its dependent claims.

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be supported by the Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

Accordingly, claims 7, 8, and 10 to 17 are allowable.

CONCLUSION

In view of the above, it is respectfully submitted that all of the presently pending claims 7, 8, and 10 to 17 are allowable. It is therefore respectfully requested that the rejections and objections be withdrawn, since they have been obviated. Since all issues raised have been addressed, an early and favorable action on the merits is respectfully requested.

Respectfully submitted,
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